

September 16, 2008

Mr. Mitch Wright
Tall Pines Lakeview Estates, LLC
3915 N. Schreiber Way
Coeur d'Alene, ID 83815

RE: Draft 401 Certification of NWW #2007-815-C03 Road Construction for "The Pines at Haydenwood" subdivision.

Dear Mr. Wright,

We have reviewed your application to discharge 1,250 cubic yards of fill material into 0.3 acres of wetland, replace two culverts and add one additional culvert to create residential roads. The project is proposed take place in Stump and McCleans Creeks and adjacent wetlands.

Under Section 401 of the Federal Clean Water Act, federal agencies issuing discharge permits must be provided a notice of certification from the State of Idaho that the project will meet state water quality standards. This draft certification will receive public comment for a 30 day period of time. At the end of this comment period, DEQ will consider the comments and provide our final certification decision. DEQ has requested a time extension from the Army Corps of Engineers until October 31, 2008 to accommodate this process.

By copy of this letter, the Army Corps of Engineers is being notified of our certification decision and conditions. The following conditions shall be applied to the Army Corps of Engineers Permit for the project:

1. If there is a spill or release of a hazardous material, the State Communications Center shall be contacted immediately at 1-800-632-8000. All contractors shall have ready access to the State Communications Center number.
2. Each field supervisor of every contractor involved in water related work shall read this certification.

3. Hazardous and deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of state waters unless adequate measures and controls are provided to insure that those material will not enter state waters as result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third party activities.
4. Equipment shall be kept in good repair so as to not chronically leak fluids. If equipment in good repair normally leak fluids, absorbent pads or other containment shall be placed to capture the fluid during non-operating hours.
5. No equipment or associated machinery shall create a petroleum product sheen on the water due to poor maintenance, poor fuel handling practices or lack of other best management practices associated with petroleum products handling, use and storage.
6. Work in streams shall be done when the channel is dry. If the stream flows year around, work shall be done during low flow.
7. Stream water shall be diverted around the work site during construction. Earthen dams shall not be used to divert water.
8. This certification does not authorize return flows from a mechanical water treatment system unless authorized by a NPDES discharge permit.
9. If stream water or adjacent wetlands becomes turbid as a result of construction, immediate steps shall be taken to reduce turbidity until water clarity matches that of water upstream of the project. These steps shall use knowledgeable and reasonable effort, using a higher level of knowledgeable and reasonable effort at each instance turbid water appears. This iterative process ensures that best management practices that are not working are replaced or enhanced by more effective measures. This requirement is particularly important since Hayden Lake has an approved total maximum daily load (TMDL) due to nutrient pollution. The TMDL requires a reduction of nutrients from the entire watershed of Hayden Lake. Soil particles carry nutrients and therefore, sedimentation of streams must be reduced.
10. No fertilizer shall be applied in the vicinity of stream crossings and wetlands.

11. Silt fences shall be placed above the ordinary high water mark of stream channels and outside of wetland boundaries. The purpose of silt fence is to keep sediment from entering the water body or wetland, not to temporarily trap it in one area of the water body or wetland only to be suspended when the water level rises. Additionally, the trenching in of silt fences on stream beds damages the bed and mobilizes sediment.
12. Placement of portable toilets shall not be in the vicinity of any water body. The distance shall be such that if tipped over, the discharge should not be able to reach a water body or wetland. A barrier of straw bales could also be constructed to provide secondary containment if this distance can't be achieved due to site restrictions. The barrier must be sufficient to contain the spill.
13. The contractors shall be notified of and be prepared for seasonally changing water flow and runoff. Rain on snow events and rapid snow melt are common throughout winter and spring months in this project area. Best management practices shall be designed to function effectively under these challenging conditions. Recent relief from drought in northern Idaho which has been prevalent in this area for a long time, means high snowfall amounts and greatly increased spring runoff. Be sure you take this into consideration when selecting best management practices.

If construction is completed in accordance with the described work plan and above conditions, DEQ certifies under Section 401 that this construction will comply with applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and will not violate Idaho Water Quality Standards.

Any modification or amendment to the project, which DEQ expects will result in additional impacts to water quality, shall require a new 401 water quality certification from DEQ before any construction activities affected by the modification or amendment may proceed.

All construction activities authorized under the referenced permit shall cease for failure of the applicant to comply with the conditions of this certification and shall not resume until the applicant demonstrates to the satisfaction of DEQ compliance with all the conditions of this certification.

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The Final §401 Water Quality Certification may be appealed pursuant to the Environmental Protection and Health Act, Idaho Code 39-107(5), the Idaho Administrative Procedure Act and the rules of Administrative Procedure before the Board of Environmental Quality, IDAPA 58.01.23. Such an appeal is a prerequisite to any district court action and must be initiated by filing a petition for a contested case in accordance with the Rules of Administrative Procedure before the Board of Environmental Quality (IDAPA 58.01.23) within thirty-five days of the date of the Final 401 certification.

This certification does not constitute authorization of the permitted activities by any other local, state or federal agency or private person or entity. This certification does not excuse the permit holder from any obligation that may exist to obtain any other necessary approvals, authorizations or permits, including without limitation, any approval, if one is required, from the owner of a water conveyance system to use the system in connection with the permitted activities.

DEQ would like to strongly suggest Tall Pines Lakeview Estates, LLC take extra precautions to protect riparian trees, shrubs and grass along stream channels. A wide buffer, dense with native vegetation traps sediment, nutrients and other pollutants before they reach the stream. This will greatly benefit Hayden Lake water quality and in-stream fisheries further down the channel.

If you have any questions regarding this certification please contact June Bergquist at 208-666-4605.

Sincerely,

Daniel Redline, Regional Administrator
Coeur d'Alene Regional Office

cc:

Beth Reinhart - Army Corps of Engineers
Mary Terra-Berns - Idaho Fish and Game
John Olson - U.S. Environmental Protection Agency, Boise